

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2016-07
Issued July 14, 2016**

FACTS

The inquiring attorney's law firm proposes to send e-mails to members of the Rhode Island Bar seeking referrals of clients in the law firm's areas of practice. The inquiring attorney states that e-mail addresses of members of the Bar are publically available on the Rhode Island judiciary website. In addition to the Rhode Island Rules of Professional Conduct on advertising and solicitation, the inquiring attorney asks about the effect of the Can-Spam Act on this proposal.

ISSUE PRESENTED

The inquiring attorney asks whether the Rules of Professional Conduct permit his/her law firm to send e-mails to members of the Bar for the purpose of seeking referrals of clients.

OPINION

Sending e-mails to members of the Rhode Island Bar for the purpose of seeking referrals of clients is permitted under the Rules of Professional Conduct. The proposed lawyer-to-lawyer e-mails are neither solicitations under Rule 7.3, nor advertisements under Rule 7.2. The law firm must comply with Rule 7.1 and Rule 7.4.

REASONING

The inquiring attorney's law firm proposes to send e-mails to other lawyers advising them of the firm's areas of practice, and inviting them to refer clients to the firm with cases relating to those practice areas. Rule 7 of the Rules of Professional Conduct governs attorney conduct relating to information about legal services, and contains regulations on solicitation and advertising.

Rule 7.3 prohibits, with limited exceptions, direct contact with prospective clients. Rule 7.3 (a) states:

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) is a business organization, a not-for-profit organization, or governmental body and the lawyer seeks to provide services related to the organization.

The proposed e-mails are lawyer-to-lawyer communications, and are therefore not prohibited solicitations under Rule 7.3. Because the proposed e-mails will be sent only to lawyers, they are also not advertisements under Rule 7.2 entitled “Advertising.” See R.I. Supreme Court Ethics Advisory Panel Op. 92-22 (1992) and R.I. Supreme Court Ethics Advisory Panel Op. 89-17 (1989).

Rule 7.2 permits public dissemination of information about lawyers and their services. In pertinent part the Rule states as follows:

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

The remaining paragraphs of the Rule, not applicable to this inquiry, set forth filing requirements and other regulations on lawyer advertising.

Advertising regulations for lawyers support two important objectives, namely, to protect potential clients from advertising that is false or misleading, and to provide consumers with access to information about legal services, particularly in the case of persons of moderate means who may not have had extensive use of legal services. See Comment 1, Rule 7.2. The law firm’s proposed e-mails in this inquiry will not be transmitted to consumers of legal services. A client or potential client of a lawyer who is the recipient of the proposed e-mail will have the benefit of that lawyer’s counsel regarding information about the inquiring attorney’s legal services. While the restrictions that apply to advertisements (Rule 7.2) and solicitations (Rule 7.3) do not apply to the proposed e-mails, the inquiring attorney’s law firm must comply with Rule 7.4 on specialization, and with Rule 7.1 which prohibits false or misleading communications about lawyers and their services.

The inquiring attorney has asked about the proposed e-mails as they relate to the Can-Spam Act of 2003, which is a federal statute that applies to unsolicited bulk commercial e-mails. The Panel’s jurisdiction is limited to interpreting the Rules of Professional Conduct. Therefore the Panel will not consider the applicability of Can-Spam or other law to these facts.

The Panel concludes that sending e-mails to members of the Rhode Island Bar for the purpose of seeking referrals of clients is permitted under the Rules of Professional Conduct. The proposed lawyer-to-lawyer e-mails are neither solicitations under Rule 7.3, nor advertisements under Rule 7.2. The law firm must comply with Rules 7.1 and 7.4.